

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1734 of 2018**

Arising Out of PS. Case No.-59 Year-2012 Thana- ROHTAS District- Rohtas

1. Mahendra Ram Son of Sri Lakshaman Ram, Resident of Village- Ramdihara Station, P.S. Amjhor, District- Rohtas.
2. Anjali Madam @ Juli Munda, W/o Late Ajay Dhanwar, R/o Mohalla- Kokar buty more, P.S. Kokar, District- Ranchi Jharkhand. Present Address Village- Banjari, P.S. Rohtas, District- Rohtas.
3. Dukhati Devi, W/o Vijay Ram, Resident of Village- Nimiaghoda, P.S. Rohtas, District- Rohtas Bihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Pandey, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

23-07-2019

Appellants, Mahendra Ram, Anjali Madam @ Juli

Munda, Dukhati Devi have been found guilty and accordingly, sentenced by the learned Presiding Officer, FTC-II, Sasaram, Rohtas vide judgment of conviction and order of sentence dated 15.03.2018 passed in connection with Sessions Trial No. 211/2013 arising out of Rohtas PS Case No. 59/2012.

2. From para-18 of the judgment, it is evident that Anjali Madam @ Juli Munda, Dukhati Devi and Mahendra Ram have been found guilty for an offence punishable under Section 366A/34, 120B/34 IPC and further Mahendra Ram has been found guilty for an offence punishable under Section 376 IPC. Further from Para-21, the sentence portion, it is evident that



Dukhati Devi has been sentenced to undergo RI for five years under Section 366A/34, 120B/34 IPC. Anjali Madam @ Juli Munda has been sentenced to undergo RI for 10 years for an offence punishable under Section 366/34 (ought not to be) and 120B/34 IPC. Appellant, Mahendra Ram has been sentenced to undergo RI for ten years under Section 366A/34, 120B/34 and also to undergo RI for 10 years as well as to pay fine of Rs. 50,000/- for an offence under Section 376 IPC, in default thereof, to undergo SI for one year additionally. It has further been directed that in case of deposit of fine, Rs. 40,000/- will be paid to the victim by way of compensation. It is further evident that no sentence has been inflicted for an offence punishable under Section 120B of the IPC which is found inconsistent with the manner of sentencing as indicated hereinabove.

3. For kidnapping of daughter's daughter (natni) (name withheld), PW-2 aged about 15 years by Mahendra Ram, Anjali Madam @ Juli Munda, Dukhati Devi on 12.06.2012 whereupon there was hectic search but the informant, Taregni Devi (PW 3) failed to locate her whereabouts whereupon, lastly, filed a written report on 04.08.2012 disclosing the event in which, it has also been incorporated that on 29.05.2012, the aforesaid victim was previously taken away by the aforesaid



accused persons, namely, Mahendra Ram, Anjali Madam @ Juli Munda, Dukhati Devi, but she returned back on 01.06.2012.

4. On the basis of the aforesaid written report, Rohtas PS Case No. 59/2012 was registered followed with an investigation as well as submission of charge-sheet facilitating the trial, meeting with ultimate result, subjected matter of the instant appeal.

5. It is to be noted down that the charge-sheet was submitted in two parts. Firstly, against Mahendra Ram and Anjali Madam @ Juli Munda whereupon Sessions Trial No. 211/2013 has originated and subsequently, against Dukhati Devi on the basis of Sessions Trial No. 217/2013 was registered and at the stage of framing of charge vide order dated 04.09.2013, both the Sessions Trials were amalgamated.

6. The case of the defence as is evident from cross-examination as well as statement under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, one DW has also been examined through which some documents have been exhibited.

7. In order to substantiate its case, prosecution has examined altogether five PWs, who are PW-1 Manita Devi, PW-2, victim (name withheld) PW-3, Taregni Devi, PW-4 Dr.



Punam Kumari, PW-5 Om Prakash Paswan, IO. as well as also exhibited as Ext-1, signature of the victim over statement recorded under Section 164 CrPC, Ext-2, Signature of informant over written report, Ext-3, medical report. In likewise manner, DW-1, Uma Shankar Dubey, a law clerk has been examined, but after going through the evidence, it is evident that though there happens to be reference with regard to filing of different papers at the end of victim, PW-2 but the reason best known to the defence, those documents have not been exhibited nor the same is available on the record.

8. Learned counsel for the appellant while challenging the finding recorded by the learned lower court, has submitted that there happens to be inordinate delay in launching of the prosecution without any explanation and that being so, the whole prosecution case is likely to be disbelieved. In likewise manner, it has also been submitted that parents of the victim has not been examined and for that, again there happens to be no explanation. No independent witness has been examined and for that, there happens to be no explanation. In the aforesaid background when the remaining evidence is taken up for proper consideration, it is evident that the prosecution suffers from some sort of improbable activity because of the fact that PW-3,



informant has deposed that on 12.06.2012 when victim was kidnapped from her house, she was not present. The aforesaid activity is to be seen in the background of the fact that even if prosecution case is considered, the victim, firstly was kidnapped on 29.05.2012 and had returned on 01.06.2012, then in that circumstance, was it possible for the informant PW-3 to leave the victim alone and in likewise manner, after having return of the victim on 01.06.2012, she must have been sent to the place of her parents instead of keeping the victim at her place without any rhymes and reason and, the story so propounded by the PW-2 (victim) that while she was alone in the night of 12/13.06.2012 the accused persons entered inside the house after scaling the thatched wall also appears to be unbelievable. Furthermore, the conduct of the prosecution has also to be seen in the background of the fact that PW-1, another daughter of PW-3 has come up to depose but, the parents of PW-2 has not and that has got relevancy and would play an important role in appreciating the truthfulness of the prosecution version. In the aforesaid background, it has been submitted that the prosecution case suffers from vagueness, inconsistency, improbability and the same when is taken together with the medical evidence, Ext-3, the whole case is found dis-believable, whereupon, judgment



impugned is fit to be set aside.

9. On the other hand, learned APP controverting the submission made on behalf of the learned counsel for the appellant, has submitted that admittedly PW-1 and 3 are not eyewitnesses to the occurrence. PW-4 is the doctor. PW-5 is the I.O. From the evidence of the victim (PW 2), it is apparent that she had narrated the incident in a manner which she faced during intervening period and further, the medical evidence supports that she was sexually exploited. That being so, the appellants have rightly been sentenced and convicted. But, at the present moment, learned APP has submitted that sentence should also be against Anjali Madam @ Juli Munda for the offence punishable under Section 366A IPC and not under Section 366 IPC as there was no finding of guilt against her under Section 366 of the IPC, moreso, when the victim has been found to be minor. Apart from this, learned APP has also submitted that at para-21 of the judgment impugned there happens to be some sort of ambiguity while prescribing sentence against the appellants which is found connected without having adverse impact upon the finding recorded by the learned lower court.

10. Gone through the lower court record. From



perusal of the lower court record, it is evident that PW-1 and 3 are not eyewitness to the occurrence. What they have deposed on the basis of disclosure having at the end of PW-2, victim, the only thing which is found relevant for consideration is that PW-3, informant had stated that at an earlier occasion also while the victim was taken away by the accused persons on 29.05.2012, she had gone to the police station and filed a written report but, on the basis thereof, a Sanha was registered. After returning of the victim, she again had gone to the police station and at that very time, the police official advised her not to insist upon registration of a case and so, she left and that part of evidence remained intact during course of cross-examination, as defence failed to test her over the aforesaid disclosure.

11. Now coming to the evidence of the victim, PW 2 it is evident that her conduct suggests otherwise as she remained in company of the appellants for nearly three months, moved frequently, she on her own came on 12.01.2012 and for that, she had an explanation that after getting help at the end of daughter of appellant, Mahendra Ram, she escaped from his house and then came to the police station, how and in what manner is another factor but, the most devastating step having at the end of the appellants, is that irrespective of disclosure since at initial



stage of the instant criminal prosecution acknowledging the status of the victim, PW-2 to be a minor, more particularly, by way of Ext-5 having date of birth 15.01.1998, she has not been cross-examined on that very score nor PW-1, 3 were. Furthermore, the defence could not be able to shake her testimony on merit. Furthermore, the doctor, PW 4 had deposed that victim was very much experience of sexual intercourse as was not virgin.

12. That being so, status of PW-2 remained intact as a minor and as defence could not escape the appellants from the conviction as well as sentence. The evidence of PW-2 has minutely been gone through in order to search and filter the same. It is evident that in between night of 12/13-06-2012, she was forcibly taken away from her house to the house of Dukhati Devi wherefrom she was lifted to Ranchi where Mahendra and others raped her in presence of Anjali, then to Garhwa where she was also reaped, then to Dihri(Tarbangla) where she was also raped and then to the place of appellant, Mahendra where she was also raped and from there, she escaped. Further, she identified all the accused in the dock. During cross-examination, it is evident that she was not even cross-examined that in the hotel while staying at Ranchi whether waiter used to visit the



room, whether she tried to escape therefrom, whether any kind of steps were taken to get herself rescued therefrom and in likewise manner at Garhwa and in likewise manner at Dihri. Had there been, along with identity herself a consenting party coupled with being major could have changed the scenario but having failed on that very score found reluctant. .

13. PW-5 the I.O., as is evident from his evidence is relevant only on the score that the victim on her own approached him on 13.09.2012 and then other activity followed, that means to say, her examination under Section 164 CrPC, medical examination etc. were conducted, accused persons were apprehended and after completing investigation, charge-sheet was submitted. During cross-examination, nothing relevant has been at the end of the I.O.

14. So from the evidence as discussed above, it is evident that as the defence failed to controvert the status of the PW-2 as a minor, that being so, even perceiving her conduct showing inclination towards appellants while availing the company would not be a ground to be legally acceptable, recognizable and on account thereof, the judgment of conviction and sentence recorded by the learned lower court, did not attract interference, save and except, modifying the sentence of Anjali



Madam @ Juli Munda under Section 366A/34 IPC and sentenced to undergo RI for five years, and in likewise manner, erasing the finding of Section 366A relating to appellant, Mahendra Ram as Section 366A IPC did not power the kidnapper to be punished thereunder.

15. With the aforesaid modification, instant appeal is found to be devoid of merit and is, accordingly, dismissed.

16. Appellants are under custody which they will remain till saturation of the sentence.

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(Aditya Kumar Trivedi, J)

AFR/NAFR	AFR
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